

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRIVLY DOBBINS,

Plaintiff,

No. 19-10546

v.

District Judge Paul D. Borman
Magistrate Judge R. Steven Whalen

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Defendant.

ORDER

Before the Court are Defendants' Motion for Order Requiring Dr. Aamer Farooki and his Records Custodian to Show Cause Why They Should Not be Found in Contempt of Court [ECF No. 28], and Defendants' Motion for Order Requiring Silver Pine Imaging and its Records Custodian to Show Cause Why They Should Not be Found in Contempt of Court [ECF No. 26]. For the reasons and under the terms set forth below, both motions are GRANTED.

On July 11, 2019, Defendant issued a subpoena to testify at a deposition to Dr. Farooki, pursuant to Fed.R.Civ.P. 45 [ECF No. 28-3, PageID.438], along with a Notice of Deposition of Dr. Farooki's records custodian, setting a deposition date of August 15, 2019, and requesting the production of Plaintiff's complete medical file. [ECF No. 28-3,

PageID.441-443]. The subpoena to Dr. Farooki and the deposition notice were personally served on Front Desk Clerk Layla B. at Dr. Farooki's place of business, 20475 W. 10 Mile Rd., #100, Southfield, Michigan 48025, on July 25, 2019 at 9:50 a.m. Defendant similarly served a subpoena to testify and notice of deposition (with document request) on Silver Pine Imaging, whose business address is 20475 W. Ten Mile Road, Suite 100, Southfield, MI, the same address at which Dr. Farooki was served. The same individual, Lalya B., accepted service.

Neither Dr. Farooki, his custodian of records, nor the custodian of records of Silver Pine Imaging appeared at the deposition on August 15, 2009. Plaintiff's medical records were not produced.

Defendant sent Dr. Farooki and Silver Pine Imaging copies of the present motion for show cause order by certified mail. The Court mailed Dr. Farooki and Silver Pine Imaging a notice of the October 29, 2019 hearing. Neither Dr. Farooki, his records custodian, nor the records custodian for Silver Pine Imaging appeared at the hearing.

Service of a subpoena under Rule 45 must be "made in a manner designed to reasonably insure actual receipt of the subpoena by the witness." *Franklin v. State Farm Fire & Cas. Co.*, 2009 WL 3152993 (E.D. Mich. 2009). Here, service of the subpoena by hand-delivery to Layla B. (who apparently refused to divulge her surname), the front-desk receptionist/employee of Dr. Farooki and Silver Pine Imaging, is sufficient service under Rule 45, and additional notice of the subpoena and document request was given by

certified mailing, along with the present motion. *See Oceanfirst Bank v. Hartford Fire Insurance Company*, 794 F.Supp.2d 752, 754 (E.D. Mich. 2011). Moreover, the Court mailed the notice of hearing to Dr. Farooki and to Silver Pine Imaging.

The recipient of a Rule 45 subpoena has the opportunity, under the Rule, to object to a subpoena. Neither Dr. Farooki nor Silver Pine Imaging objected. Simply ignoring the subpoena is not an option.

Accordingly, IT IS ORDERED that Dr. Aamer Farooki and his records custodian, and the records custodian of Silver Pine Imaging will appear before this Court on Friday, November 8, 2019, 11:15 a.m., at Courtroom 104, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226, and show cause why they should not be held in contempt of court.

IT IS FURTHER ORDERED that Dr. Aamer Farooki and his records custodian, and the records custodian of Silver Pine Imaging will produce at the show cause hearing any and all documentation regarding Plaintiff Trivly Dobbins, including all medical records, documents, correspondence (including emails), notes, billing records and other documents of any type within his/her/their possession in any way relating to Plaintiff Trivly Dobbins.

IT IS FURTHER ORDERED that Defendant's attorney will serve a copy of this Order on Dr. Aamer Farooki and his records custodian and on Silver Pine Imaging by

certified mail, return receipt requested.¹

If Dr. Aamer Farooki and his records custodian and the records custodian of Silver Pine Imaging fail to appear at the show cause hearing, he/she/they may be sanctioned for contempt of court. Sanctions may include monetary penalties as well as jail.²

Dated: October 29, 2019

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on October 29, 2019 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants October 29, 2019.

s/Carolyn M. Ciesla
Case Manager for the
Honorable R. Steven Whalen

¹ The Court Clerk will also mail a copy of this Order to Dr. Farooki and to Silver Pine Imaging.

² Defendant also asked for costs associated with bringing this motion. The issue of costs will be addressed at the show cause hearing.